

Social Security Status of HIV-Patients in Brazil

COMMENTARY

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Abstract

The studies show that HIV/AIDS disease had and is having a high impact on Populations' health but it represents serious socioeconomic problems added for individuals, families, communities and Governments of many countries. In Brazil, the National Standardization Panel of the Federal Courts, the body that comprises the Brazilian National Council of Justice, drafted the docket 78. From this docket, to grant or deny the social security benefit, the judges will not have their decisions limited only to the clinical aspects of medical experts report, starting to also consider the personal, economic, social and cultural aspects of the HIV patient. By analyzing the cases heard by Federal Court of the 5th Region, which constitutes the Brazilian states of Paraíba, Pernambuco, Rio Grande do Norte, Ceará, Alagoas and Sergipe, fourteen cases were found on appeal of special courts. Within those cases, ten were founded to be HIV positive and were granted some sort of pension and welfare benefit, and four were rejected, denying incoming thus those patients with syndrome, the right to receive benefits. The Brazilian Federal Government through the Provisional Measure no 664 from 2014 excluded the art. 151 of the Federal Law 8. 213/91 which dealt with the granting sickness benefit and disability retirement to patients with various disabling conditions which among the HIV saving a total of 18 million to public coffers. The authors point out that the exclusion or this article constitutes the loss of benefits –sickness assistance and disability retirement– those who do not have a minimum period of contribution to Social Security. That constitutes prejudice to the HIV patient's rights in relation helpless leaving them to State coverage. In this context HIV/AIDS diagnosis not only adversely affects individual health and survival but may be associated with higher also need for care, thus resulting in higher expenses for the healthcare system.

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Keywords

HIV; Law; Social support.

An estimated 34 million people are infected with Human Immunodeficiency Virus (HIV) worldwide [1]. There are 1.1 million HIV-positive individuals living in the United States [2] and of nine countries where HIV incidence increased by more than 25% between 2001 and 2011, six are in eastern Europe and central Asia [3]. In the year 2012, 39,185 cases of AIDS were reported in Brazil. The national average was 20.2 cases per 100,000 inhabitants, to which in the last 10 years the country has suffered an increase of about 2% in the rates of seropositive patients [4].

At the same time, the cost of antiretroviral therapy has gradually increased from about €92 million in 2004 to more than €193 in 2010 as Italian study [5]. In Spain, the estimated treatment cost per patient-year is €11,638, with an SD of €3,756. The approximate annual cost of treating these patients in Germany is €32,110 (SD €6,960). For France, the estimated per-person annual treatment cost is €14,821 (SD €1,897). Lastly, it was found that the mean cost of this treatment per patient-year in the United Kingdom was €25,340 (SD €14,549) [6]. In Brazil, between the years of 2005 and 2013, the access to treatment has been increased from 165,000 (2005) to 400,000 (2014) treated patients, with the prospect of R \$ 36 million invested in 2014 [7].

Several studies have documented the complex relation between socioeconomic context and the spread of infectious diseases [8]. Deleterious economic effects of HIV/AIDS on individuals and households include reduced income, reallocation and consumption of assets, savings and resources [9]. Its management involves the treatment of AIDS-associated symptoms and opportunistic infections, and other costs associated with morbidity/premature mortality of adult working patients [10].

The National Standardization Panel of the Federal Courts, the body that comprises the Brazilian National Council of Justice, drafted the docket 78. Thus, to grant or deny the social security benefit, the judges will not have their decisions limited only to the

clinical aspects of medical report experts, starting to also consider the personal, economic, social and cultural aspects of the HIV patient [11, 12].

By analyzing the cases heard by the Federal Court of the 5th Region, which constitutes the Brazilian states of Paraíba, Pernambuco, Rio Grande do Norte, Ceará, Alagoas and Sergipe, fourteen cases were found on appeal of special courts [13]. Within those cases, 10 were founded to be HIV positive and were granted some sort of pension and welfare benefit, and 04 were rejected, thus denying those patients with the syndrome, the right to receive benefits (**Table 1**).

It is noteworthy that most of the favorable decisions were based on the fact that the State has the duty to seek public policies that guarantee survival for patients with diseases, not only with medical help, but social support, ensuring a minimum of dignity to the HIV-positive patient, according to the prerogatives of Article 5 of the Constitution of 1988 [14]. Thereby, the HIV/AIDS disease not only had and is having a high impact on populations' health but it represents serious added socioeconomic problems for individuals, families, communities and governments of many countries [15].

The rejected cases were based on expert medical reports from the National Institute of Social Security, which show that the AIDS generates discomfort and some limitations, but not significantly reflected in the performance of normal work activities, not demonstrating any physical or mental disability for independent living or to work. According to literature for the positive HIV worker, physical and psychological issues, like fatigue and cognitive impairment are a problem for optimal functioning at work [16]. Stigma and discrimination also seem to be the main employment-related problems for people with HIV [17].

Another justification for the invalid cases heard is that there is no emergence of occupational diseases that render impossible to work or simply that certain activities that have greater contact with people

Table 1. Judged proceeding relating to the application for receiving social security benefits from 2012 to 2014 the Regional Federal Court (Tribunal Regional Federal–TRF), 5th Region.

Case Number	Year of Publishing	Comorbidities	Social-Economic and social-cultural conditions	Benefits	Trial Result
0505644-08. 2014. 4. 05. 8500	NOV/12/2014	injury caused by a shot in the foot.	-	Sickness allowance	rejected
0519757-10. 2013. 4. 05. 8400	MAY/14/2015	lumbar herniated disc	-	Sickness allowance/ retirement	rejected
05006248-03. 2013. 4. 05. 8500	FEB/28/2014	Thrombosis	Low income	OLSA*	favored
0503778-82. 2011. 4. 05. 8107	AUG/08/2013	Chronic diarrhea and papular desquamating lesions	50-year-old famer/sun exposure	disability retirement	favored
0508532-76. 2011. 4. 05. 8201	JUL/12/2013	Diabetes mellitus; leprosy	46 years old; Low level of education; farmer; general services	OLSA	favored
0504478-75. 2008. 4. 05. 8103	MAY/09/2013	-	Faces prejudice for having AIDS, small town	Sickness allowance	favored
0521906-61. 2008. 4. 05. 8300	APR/24/2013	-	Low income; No education level; 51 years old.	disability retirement	favored
0500869-18. 2012. 4. 05. 8403	MAR/20/2013	pulmonary tuberculosis	-	disability retirement	favored
050302-58. 2012. 4. 05. 8501	JAN/11/2013	Fever; Diarrhea.	Faces prejudice for having AIDS, small town	OLSA	favored
0516526-52. 2011. 4. 05. 8300	OCT/29/2012	Kaposi's sarcoma and rheumatic mitral valve disease	Low education level	Sickness allowance	favored
0500520-09. 2012. 4. 05. 8502	SEP/21/2012	-	Below poverty line	OLSA	Favored
0504397-08. 2008. 4. 05. 8401	JUL/27/2012	-	Advanced age, low education and social situation	Disability retirement	favored
0500012-26. 2012. 4. 05. 9840	FEB/24/2012	-	-		
0503262-44. 2011. 4. 05. 8501	FEB/03/2012	-	driver	Sickness allowance	rejected

*OLSA- Organic Law of Social Assistance

generates greater presence of prejudice and discrimination. Literature argues that persons with severe mental illness (SMI) have high rates of HIV-risk-related behaviors [18]. Major depression is highly prevalent among HIV-positive patients [19].

The Brazilian Federal Government through Provisional Measure number 664 in 2014 excluded the art. 151 of the Federal Law 8. 213/91 which dealt with the granting of sickness allowance and disability retirement to patients with various disabling conditions among which HIV [20] saving a total of 18 million to public funds. The exclusion of this article constitutes a loss of benefits –sickness allowance and disability retirement– for those who do not have a minimum period of contribution to Social Security. This is prejudice to the right of HIV patients, leaving them helpless in relation to state coverage. In this context HIV/AIDS diagnosis not only adversely affects individual health and survival but may also be associated with higher need for care, thus resulting in higher expenses for the healthcare system [21].

Therefore, the pension system being contributory, there is no way to be disengaged from the social, economic and cultural reality of the country, where social problems require the law to shape up and reinvent itself to meet the demands of the population. In the context of Social Security Law, the docket 78 of the National Standardization Panel innovates by showing that the increased support to HIV-positive patient promoted by State should be a priority, especially when considering the individual socioeconomic spheres. This brief also points out the need to integrate the law to the structural efforts and interventions to improve social support and/or reduce HIV-related stigma.

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